

Water Pollution Control Advisory Council Meeting
April 11, 2000 - 9:40 a.m - 12:15 p.m.
Rm 111 Metcalf Building

Attendees

Council Members

Richard Parks, Fishing Outfitters
Association of Montana
Barb Butler, City of Billings Solid Waste
Don Halverson, Labor
Mike McLane, DNRC
Don Skaar, Fish Wildlife & Parks
Robert Willems, Conservation Districts

Other Attendees

Bob Raisch, Dept of Environmental Quality
(DEQ)
Gwen Pozega, DEQ
Chris Levine, DEQ
Art Compton, DEQ
Bonnie Lovelace, DEQ
Theresa Blazicevich, DEQ
Abe Horpestad, DEQ
Claudia Massman, DEQ

Introduction of Don Halverson to the Council, Richard Parks

Chairman Richard Parks introduced Don Halverson to the other members of the council. Mr. Halverson is from Missoula, where he is the business secretary for the United Association of Plumbers and Pipefitters Union. Mr. Halverson is the labor representative for the council, and was appointed effective March 23, 2000.

Approval of Minutes

The Water Pollution Control Advisory Council meeting was called to order by Chairman Parks at 9:40 a.m. Chairman Parks had one change to the minutes and that was to correct his title from Fishing Outfitters of America to Fishing Outfitters Association of Montana (FOAM) which is the correct name. With that change the minutes were approved.

DEQ Budget Proposals for Legislative Approval, Bob Raisch/Art Compton Planning Division

The Departments are putting together proposals under the Executive Planning Process (EPP). Those proposals will go through the Governor's Office of Budget and Planning. At this point, they are strictly internal proposals and have not been approved by the director of DEQ. This will be just an indication of the direction being taken. Art provided an overview of the Planning, and Prevention and Assistance Division's budget, and some perspective about the whole department budget.

Art Compton

The department is a couple of months early as to being specific with what it is going to go forward with. I can only tell you what the divisions' have proposed and what has received tentative approval. Some proposals will fall out and the priorities will change but in general terms this is what is going to happen. The council can let me know the items you would like more detail on and we can provide an update two months from now. At that point we will have a pretty good feel regarding final outcome of our proposals.

One area of uncertainty in the TMDL program is the federal rules that have been proposed. The EPA got beat up pretty badly through public comments as to some of the proposed changes. These federal rules are extensive and this has created a degree of uncertainty in the TMDL program.

The department is in litigation in Judge Malloy's court on state progress toward accomplishment of TMDL's. We don't know how Judge Malloy will rule on accelerating the schedule or appointing some supervision on the rate in which we complete a TMDL and get it approved. That is the second big area of uncertainty concerning the TMDL program.

The department has put together a four part package to frame our TMDL approach over the next two years.

Chairman Parks asked Don Halverson if he understood all the acronyms and if not to stop the proceedings and ask.

Don Halverson said we can start with TMDL.

Art then stopped his briefing to give Don Halverson a historic overview of the TMDL program.

The Clean Water Act amendments back in the 1970's, directed the states to have a structured plan for returning those water bodies that didn't meet state standards, or meet their beneficial uses, back to the point where they meet state standards or the beneficial uses designated for that water body. The TMDL approach was one element of that plan. It took Montana until the mid 1990's to put together a state approach to Total Maximum Daily Load (TMDL). It is a prescriptive recipe that indicates the number of pollutant discharges and the amount of pollutant discharge that a particular affected stream can accept and still meet state water quality standards. The first part of Montana's plan was an inventory effort. This is an on going effort where we went out and looked at about one third of the streams in the state. We came up with about 880 water bodies that were either threatened or impaired. That means they were not meeting their beneficial uses for stock water, irrigation, domestic use, fisheries, or would not if present trends continued. A TMDL is a way of getting those streams back in the black. It sets limits on what a particular water body can accept and improve to the point that it meets state water quality standards, and supports its designated beneficial uses.

There are about 880 streams on what is called the 303(d) list, which is the list of impaired and threatened waters. We update that list every two years according to state law. We finished the list in December and we are taking it to the public in a couple of weeks with 19 meetings across the state. The meetings will allow discussions with local watershed residents regarding the streams in their neighborhoods that are impaired. It is designed to generate interest in the watersheds for implementation of non-point source development of the prescriptive plan and identify projects to reduce things like sedimentation in non-point source run off. It is a very large program and definitely the Planning Divisions biggest effort, and very likely the department's biggest effort outside of the subdivision, permitting program. In 1997 the

legislature passed the first TMDL legislation, HB 546. There was concern nation wide about the slow progress of states implementing EPA's TMDL program and getting TMDL's for impaired water bodies developed and approved by the EPA. In Montana we have about 135 TMDL's completed. The first 129 were the easy ones. Those were the ones that had MPDES permits, an industrial or public waste water system that had a discharge permit. We have only completed and gotten EPA approval on another 1/2 dozen. Of the 880 streams on the list, we are taking public only about 400. The reason is, that in order to stay on the 303(d) list, we have to have what is called "sufficient credible data", proof positive that the stream is not meeting its beneficial uses. Streams that drop off the 303(d) list due to lack of information, become a monitoring priority. We have to monitor the streams to gather data to either put them back on the list, or prove that they don't belong on the list. We are working with local watershed groups to put together TMDL recipes. DEQ told the 97 legislature that this was going to be a ramp up process. The program is too big state wide, with every county and conservation district involved. Ultimately it could be a couple thousand affected water bodies and it would take a lot of people and a lot of time to start all at once. We told the legislature at that time that we would be back every two years and ask for additional increments as our experience and ability as managers to guide the effort increased. In the 1999 session we got another couple hundred thousand dollars and one additional TMDL related full time employee (FTE). The draft package for the next session as it stands right now, is for six additional FTEs and about \$390,000. That is the first part of our four-part package to the legislature.

The second part of it is asking to re-authorize about \$1.2 million that we got two years ago as supplemental non-point source money (319 money). The legislature gave us authority to spend that money, but it was a one time only authorization. We have to go back to the upcoming session and get that \$1.2 million again. The money is passed on virtually untouched to the conservation districts, as well as to others.

Mike McLane asked if the \$1.2 million was the Clean Water Action Plan?

Art said it was.

The third part is a budget amendment for \$98,000 over the winter for what we call TMDL special projects. It was federal money we didn't know we were going to get so we are putting it in the package in advance.

The fourth part is working with the Montana Dept of Transportation (MDT) to see if we can get MDT to participate in the TMDL process where past highway construction is one of the causes of impairment for a waterbody. A few weeks ago MDT agreed to fund a position here at DEQ dedicated solely to identifying projects on MDT's next big list of highway construction projects that will impact streams, and to participate in the TMDL for that stretch. It is a major milestone for us to get them to commit to doing that. What has been missing so far is that there has not been TMDL staff available to go over each state transportation implementation plan that comes out. It looks like we will get one FTE and about \$53,000.

Chairman Parks asked if this was to be paid out of highway funds rather than DEQ money.

Art said it would be paid out of highway funds.

The last element of the TMDL program has to do with that second effort of monitoring streams that have fallen off the 303(d) list due to a lack of credible data. We are asking for two additional FTE and \$135,000 to beef up the monitoring capability. That includes the 400 or so streams that have already fallen off the list due to a lack of data. In the coming lists that we do,

those streams will be gradually pulled back onto the list or let go if the data indicates that they are not impaired.

That covers the TMDL items. Other noteworthy budget proposals we have are for the SRF and the EMAP program. We are proposing to change the way we do technical assistance under the wastewater SRF program. We are asking to shift \$150,000 from federal funding to state general funding. There is an additional SRF special administration line item we are asking for that's about \$85,000.

Chairman Parks "what is SRF"?

Art, explained that it is the State Revolving Fund. DEQ operates two of these, one for drinking water to help communities get drinking water up to standards, and the other one is focused on community wastewater systems. The state revolving fund provides money to improve drinking water and wastewater. We are asking for \$150,000 for wastewater.

We also have to go back and ask the legislature to re-authorize our 319 non point source program funding. The EPA will have an additional \$400,000 to \$500,000 available in 319 funds. That is additional money beyond what we have received in the past.

The Environmental Monitoring and Assessment Program (EMAP) is a new program for us. We are going to take advantage of a five year grant to use federal money to get water quality trend information. We will take a cross section of 20-40 streams across the state and do five years of trend monitoring to get base line information on water quality trends for these streams to see where they are headed. Our hope is that the grant will go beyond five years. Our first five year grant is for one FTE and about \$165,000.

Permitting and Compliance EPP Projects, Bonnie Lovelace P&C Division

Each biennium we request spending authority for Montana Environmental Protection Act (MEPA) projects in case we have to do a big environmental impact statement (EIS), we are asking for \$800,000. The biggest one is bond forfeitures for \$30 million. If one mine forfeits its bond, it could involve more money than that. This is an estimate from the money program, typically hard rock mining, however some is for open cut mining also. If we don't have any forfeitures or problems then the money is not spent. Fines, fees and penalties are also a biennial expenditure and we are asking for \$150,000. The fines or penalties do not go back into the general fund they go to a fines, fees and penalties account which can be used for various projects in the state including reclamation of mine sites. The Facility Siting Act is also asking for \$300,000 that looks like an operational budget. They do things like pipelines and power lines.

My program has some specific staff increases namely one storm water permit writer for the cities and counties for Phase II Storm Water. I am also asking for another MPDES permit writer. Junk vehicle grants is asking for less than \$10,000 in 2002 and \$20,000 in 2003.

The hard rock section is asking for a restricted appropriation of \$500,000, for a fund to have money available for legal challenges and lawsuits. The money would be used on a contingency basis so money would not have to be taken from other programs to combat lawsuits. Open cut is asking for an additional FTE and some vehicle replacement. Not a lot of growth in the permitting division as far as FTE.

Legislative Proposals, Art Compton

The legislative items have not been endorsed or approved to the extent that the EPP items have been. The first one, and one of the most important requests, is the hard rock bonding reform package. In November 1997, the legislative auditor found that good bonding mechanisms and procedures were being used but that we were short immediate coverage for abandoned or bankrupt mines. We lacked the immediate liquid assets to be able to respond to a Zortman type of situation where a mining company has spent all their bond reclamation money and basically walks off the site. A second audit done by the legislative fiscal division last fall, found some more focused, monetary considerations that they recommended the department consider. The department wants to address the concept of perpetual water treatment at mines. It is an issue because it is difficult to bond for and it is difficult to visualize "perpetual". It might be a good subject to discuss in more detail in a couple of months.

Chairman Parks requested a briefing on this legislative proposal at the June meeting.

Art continued by stating that in current permitting procedures, most appeals of permits go directly to the department director. This means that he cannot participate in deliberations leading up to that because he is the arbitration authority, and the one who makes a decision on an appeal. The new proposal is that the appeals would go to the Board of Environmental Review (BER) instead. We want the BER to be the appeal authority for all permitting programs.

DEQ is proposing legislation to establish an environmental reclamation and protection account from penalty collections for the purpose of funding interim cleanup or reclamation activities at specific sites where there are no alternative funding sources for cleanup.

DEQ is also proposing to amend the Sanitation and Subdivision Act. There are several reviews going on across the state for the subdivision process. The amendments would come from the proposals of those groups.

Barb Butler asked, if under the Hard Rock Bonding Reform Act there is going to be anything similar for gravel operations. It doesn't appear that gravel operations go under much scrutiny and they are posing big problems.

Bonnie replied that gravel operations are under bond.

Chairman Parks asked for that item and discussion to be placed on the agenda for the June meeting.

Proposed Rules and Circulars for Sewage Systems for Subdivisions, Bonnie Lovelace

In June, Bonnie will have an action before the council. There are a number of processes in subdivision going on right now. A tremendous amount of growth in Montana lately and a lot of issues with subdivisions have been ongoing, and need to be addressed. A task force effort began in 1998 to look at updating the regulations, which have not been updated since 1984. The Skinner decision caused a lot of discussion about what duties belong to counties, the state, and what authority everybody has over the process. It made us look at how the subdivision review process was done in the state. DEQ realized that we need legislation to at least clarify some issues. An agreement was reached during the 1999 legislature that the Montana Consensus Council would begin an effort to give all the parties involved a chance to talk about the whole process. That effort has been on going but at this point they have not completed a report about their findings. The department looked at its relationship with the counties and decided we needed to talk about roles and responsibilities. Those meetings have also been going on at the

same time. One of the key items that has come out of that effort is a rule making in the sanitation act that says the state cannot issue a subdivision approval document without a sign off from the county.

Chairman Parks asked if the roles and relationships committee is addressing the issue of a subdivision proposing something to the county, when the state has already approved it and the county was not in favor of it in the first place.

Bonnie said she felt that they have a large handle on it just by the one change in the rules that are out now. Additionally a lot of effort has been put into changing the contract that we have with the counties that want a contract. There are currently 17 counties that are contracted with the state.

Chairman Parks stated that the other question is, in your description of the division between the rule and the circular, and having flexible stuff in the circular that makes sense. In terms of updating the circular is that a directors decision in regard to changes required in the circular?

Bonnie replied that it's both. Because the circular is adopted in three different sets of rules the content of the circular can be looked at in any of the rule making and we are going to be coordinating those.

Chairman Parks asked in the future are we going to operate in the same way?

Bonnie said absolutely yes.

Big Sky MPDES Permit, Bonnie Lovelace

Everything I know is in the briefing paper I gave you. It is in the middle of a legal process. The permit was issued by the department and was appealed to the Board (BER). The appeal was dismissed, and it was then challenged in court and that's where it is now.

TMDL Program, Bob Raisch

The 303(d) list, review is in the final process. It will be out for publication by the end of this week. It was a much more difficult project than we initially thought. We had to develop methods for determining sufficient credible data or the amount of data necessary to determine whether beneficial uses are being achieved. We also had to develop methods for determining whether the beneficial uses of the waters are being met and for prioritization of the list for TMDL development. As of today we have made determinations for sufficient credible data, beneficial uses, and prioritized all the water bodies on the 1998 list. Of the 886 water bodies, 458 were determined to have a lack of sufficient credible data to make a use determination. Those water bodies, by statute, come off the list, and will have to be reassessed. There were 45 lakes or streams that met their beneficial uses and were removed from the list. There are 381 lakes and streams that remain on the list as either impaired or threatened. Very few of them are threatened. The list will be published on April 14 and that will start the 60 day public comment period. The final report may change based on the public comments received.

Barb Butler asked what information is on the TMDL website.

Bob said that the entire report should be on the website by April 17.

Chairmen Parks said approximately 400 stream reaches are not presently on the list because they don't meet the sufficient credible data regulation, and not because there is any presumption that the streams are not at risk. The only water bodies that have actually been de-

listed due to not being impaired are the 45 specifically identified water bodies. There is also a high probability that most of the approximately 450 streams will be back on the list after the data reassessment is through.

Bob replied yes that is correct, only five 5 per cent of the streams that have sufficient credible data came off the list. If that ratio continues, you would expect 95 percent of the 458 streams to go back on the list after we gather the data we need.

Chairman Parks: It might even be higher because of the lack of data. This gets back to the argument that was going on before this started. People said we didn't need this list because most of those streams were not impaired.

Bob replied that it appears from what we have done that most of the streams that were on the list should have been on the list. The fact that there is over 400 streams coming off the list because of a lack of data means we have to reassess them. This puts us in a little bit of a resource dilemma. Do we spend our resources working on the 381 streams that need TMDLs or do we spend resources on meeting our obligations to reassess these waters that came off the list. That is one of the things we hope to get some public comment on. That was also the force behind one of our TMDL proposals to beef up our monitoring ability so that we can reassess some of these streams as well as some streams that have never been assessed in the State.

Chairman Parks: It seems to me it would be appropriate to let the legislatures know that they are obligated to spend the money.

Don Halverson asked, what criteria was missing for these streams to drop off the list.

Bob said some of the data was collected by DEQ, some by DNRC, FWP, USGS, and the US Forest Service. We solicited and gathered data from where ever it was available. We had a procedure that we looked at to determine if we had enough data in all the categories, chemical, physical, biological, and habitat. We looked at how much data was gathered, and when it was gathered. Was the data from a single grab sample or an elaborate monitoring program that gathered monthly or quarterly samples. All these factors came into play before we could say there was sufficient credible data on a particular water body.

Coal Bed Methane, Bob Raisch

Bob reviewed the letter sent from Chairman Parks to the Director conveying the Council's concern about the coal bed methane issue. The letter was sent to the Director, and since then, the Northern Plains Resource Council has filed a lawsuit against the Board of Oil and Gas (BOG) to compel them to meet the Montana Environmental Policy Act (MEPA). The department has also been preparing a briefing paper to be delivered to the Governor's office to lay a foundation of what the coal bed methane issue really is, what impacts it could have and some recommendations. One recommendation was that the Governor should appoint a lead agency that would head a multi agency team to do an environmental assessment of the cumulative effects of coal bed methane. During the meeting with the Governor there was some discussion as to which agency would be the lead. That issue has not been resolved yet but at least the agencies involved have been named. They are, DNRC, DEQ, FWP, and the BOG. The Governor is strongly in favor of a comprehensive environmental analysis of the cumulative effects of coal bed methane development. The Governor recommended that all agencies take a detailed look at the BLM environmental assessment. That document could contain information useful to the state's analysis. DEQ has conducted some water quality monitoring in the area but more data needs to be gathered from the discharge area.

Chairman Parks asked if the water quality data showed actual exceedances of standards?

Abe said they may be exceeding the narrative standards for sodium and TDS.

Chairman Parks asked if they going to sample any well discharges directly.

Abe said the idea is to start at a point on Squirrel Creek and walk down the stream and sample every discharge that flows into Squirrel Creek.

Barb Butler asked if there was any background information.

Abe said there is some historical data back in the 70's from Squirrel Creek but there is no data available from over the last ten years.

Clark Fork Nutrient Agreement, Bob Raisch

Concern began in the mid 1980's over an observed increase in foam and algae growth in the Clark Fork River below Missoula. There was serious concern in Idaho over the potential eutrophication of Lake Pend-Oreille. In 1987, congress passed a public law under the Federal Clean Water Act, to do a detailed study of the Clark Fork River, Pend-Oreille Lake, and the Pend-Oreille River that comes out of the lake. That study was conducted in 1989-90 and the report was published in 1993. The conclusion of the study was that the water in the lake was unchanged from the water quality of 1950. The threat to the lake was coming from growth and development around the lake and local tributaries into the lake. There were some restrictions placed on nutrient loading in the Clark Fork basin and as a result of these restriction loadings in the Clark Fork has gone down and will continue to go down. The concern in Montana was that the progress we were making was going to be off set by growth and development around Pend-Oreille Lake. Our fear was that Idaho would continue to point a finger at us saying you need to do more. Both states have now signed a commitment to work on an agreement and the Tri-State Water Quality Council has agreed to facilitate it. A technical committee has been formed to look at all the data that has been collected over the last few years, and try to come up with a basis for certain targets that the states would agree to meet. Before the agreement is signed by the states, it will be taken to the public through meetings in Idaho and Montana.

Don Skaar asked if there is no waste load allocation, how does everyone working together keep the levels low.

Bob said once we set the target at the border and we sign the agreement DEQ is going to do what ever is necessary to insure that we meet that target. It will be done by voluntary methods through conservation efforts.

Don Skaar asked how the municipalities in the Clark Fork drainage get brought on to the nutrient reduction plan?

Bob answered that we started out by developing a TMDL for nutrients in the Clark Fork specifically for the foam and the nuisance algae in the river. We determined that controlling discharges from the four major point sources, at least in the short term, could meet the beneficial uses and eliminate the nuisance algae. The point sources asked to come up with a voluntary approach to meeting the target.

Don Skaar questioned what was the carrot or the stick for the municipalities to get them to voluntarily comply?

Bob stated that there needed to be a TMDL developed because it was an impaired stream for nutrients, it was a high priority on our list, and the state was working on a TMDL for point sources. Point source TMDL's get incorporated into a permit and the state could have gone

ahead and done that. The municipalities thought it would be better if they could keep that under their control, and decide what types of controls they could do for themselves.

Don Skaar said it could potentially be a model for the upper Missouri River.

Mike McLane asked if Butte Silver Bow had come up with any plans for their point sources yet.

Bob replied that the Butte point source plan is very complicated and has a lot of contingencies. It is based on two things: 1) reducing their effluent through various ways and 2), the water from Silver Lake is very clean water and they can use some of that for dilution.

That concluded the briefings. Chairman Parks said we should ask some questions about why people aren't here and see what we can do about increasing attendance especially among the statutory members.

Next Meeting

The council confirmed the next meeting for June 8, 2000.

Adjournment

Chairman Parks adjourned the meeting at 12:15.